

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

UNITED STATES OF AMERICA,
Petitioner,

-vs-

Case No. A-11-CA-612-SS

JAMES A. BREWER,
Respondent.

ORDER

BE IT REMEMBERED on this day the Court held a hearing in the above-styled cause, and now enters the following opinion and orders.

On July 21, 2011, this Court ordered Respondent James Brewer to appear on August 22, 2011, at the office of the IRS Revenue Officer assigned to handle Brewer's case, for the purpose of complying with an IRS summons. In the event Brewer failed to comply with that order, the Court ordered Brewer to appear in front of it on August 26, 2011, to show cause why he should not be held in contempt.

Brewer failed to appear before the IRS on August 22, 2011, and likewise failed to appear before this Court on August 26, 2011. Accordingly, the Court holds Brewer in contempt of court for his failure to comply with this Court's July 21, 2011 order.

The Government has provided the Court with an affidavit, purportedly from Brewer, explaining that Brewer suffers from a painful medical condition. In the affidavit, originally dated April 15, 2011, and apparently re-sent to the Government with a cover letter on August 24, 2011,

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Brewer states: "I reserve whatever strength I have to focus on fighting pain. That has become my life." Aff. at 3.

As this affidavit was written prior to the Court's July 21, 2011 order, it clearly was not offered as a reason for missing either the August 22, 2011 meeting with the IRS, or the August 26, 2011 hearing before this Court. Nor does Brewer state anywhere in the cover letter that his medical condition is the reason he missed either ordered meeting. Finally, there is no evidence in the record indicating Brewer explained his condition to the IRS, or to this Court's staff, or otherwise sought postponement of the required meetings or other accommodation. Accordingly, while the Court is not unsympathetic to Brewer's apparent medical plight, it nevertheless finds Brewer in contempt for failing to comply with its July 21, 2011 order.

However, rather than taking Brewer into custody at this time, the Court is inclined to make reasonable accommodations in light of his alleged medical condition. Therefore, Brewer is ORDERED to meet with IRS Revenue Agents, produce books and records, and otherwise comply with the IRS summons, within THIRTY (30) DAYS of entry of this order. This meeting may take place at Brewer's home, if his medical condition so requires. However, if Brewer fails to comply with the IRS summons within thirty days, he will be taken into custody by United States Marshals.

Accordingly,

IT IS ORDERED that the Court finds Respondent James A. Brewer in contempt of court for his failure to comply with the Court's July 21, 2011 order;

IT IS FURTHER ORDERED that Brewer must meet with IRS agents, produce books and records, and otherwise comply with the IRS summons, within THIRTY (30) DAYS of entry of this order;

IT IS FINALLY ORDERED that the affidavit produced to the Court by the Government, and which purports to have been written by Brewer, shall be FILED UNDER SEAL in this case.

SIGNED this the 26th day of August 2011.



SAM SPARKS
UNITED STATES DISTRICT JUDGE